

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

NORTHERN ILLINOIS GAS COMPANY)	
d/b/a NICOR GAS COMPANY)	
)	Docket No. 10-0562
Application pursuant to Section 8-104 and)	
Section 9-201 of the Illinois Public Utilities)	
Act for consent to and approval of an Energy)	
Efficiency Plan and approval of Rider 30,)	
Energy Efficiency Plan Cost Recovery and)	
Related changes to Nicor Gas' tariffs.)	

**VERIFIED INITIAL BRIEF
OF THE NORTHERN ILLINOIS MUNICIPAL
NATURAL GAS FRANCHISE CONSORTIUM**

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¹ Pursuant to the Administrative Law Judge’s direction, this Initial Brief follows the “Common Issues Outline” being used in the instant proceeding, and addresses only those sections of the Common Issues Outline on which the Consortium has comments.

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The Northern Illinois Municipal Natural Gas Franchise Consortium (the "Consortium"), by and through its attorneys, DLA Piper LLP (US), respectfully submits to the Illinois Commerce Commission ("Commission") its Initial Brief in the instant proceeding.²

I.

INTRODUCTION

The Consortium is addressing energy efficiency issues as part of its broader efforts to establish a model natural gas franchise agreement for use in the Nicor service territory, among other areas. The energy efficiency requirements contained in Section 8-104 of the Public

² The Consortium recognizes that the December 17, 2010 Ruling of the Administrative Law Judge granted Nicor's Motion to Strike the Consortium's Direct Testimony and granted Nicor's request to strike the Consortium's cross-examination of Nicor witness Mr. Jerozal. Concurrent with filing this Initial Brief, the Consortium is filing a Petition for Interlocutory Review of the December 17, 2010 Ruling, which Petition respectfully seeks reversal of that Ruling. Accordingly, in light of the expedited schedule in this proceeding, and in order not to cause any delay should the Commission grant the Consortium's Petition for Interlocutory Review, the Consortium is filing the instant Initial Brief, including references to currently stricken testimony and cross-examination, consistent with the case schedule. Should the Commission deny the Consortium's Petition for Interlocutory Review, the Consortium will file an amended Initial Brief.

Utilities Act (“Act”) include provisions specifically directed at municipalities, as well as provisions that will affect municipalities. Accordingly, the Consortium, which is comprised of approximately sixty-five (65) northern Illinois municipalities, intervened in this proceeding and wishes to have its perspective on energy efficiency issues and avenues to implement energy efficiency measures considered by the Commission.

A. The Consortium

The Consortium is a joint undertaking of municipalities located in northern Illinois, organized pursuant to an Intergovernmental Agreement approved by each member municipality. (*See* Direct Testimony of Martin J. Bourke, Consortium Ex. 1.0 at 4:57-60.) The Consortium is addressing energy efficiency issues as part of its broader efforts to establish a model natural gas franchise agreement (“Model Franchise Agreement”) for use in the Nicor service territory, among other areas. (*See id.* at 5:79-81.) The Model Franchise Agreement addresses a range of items, including energy efficiency and energy savings issues. (*See id.* at 7:131-52.)

There currently are approximately sixty-five member municipalities in the Consortium, with a combined population of more than 1.3 million residents. (*See id.* at 4:59-60.) Approximately fifty-five of the Consortium’s member municipalities are located in whole or part within the Nicor service area. (*See id.* at 4:60-62.)

Many of the Consortium’s member municipalities are also members of the DuPage Mayors and Managers Conference (“DMMC”), which is one of the “councils of government” or “COGs” established, organized, and managed under Illinois law to provide joint planning and intergovernmental cooperation among their respective members. (*See id.* at 4:64-68.) Nicor maintains its corporate headquarters in DuPage County. In addition to the DMMC, other COGs represented by the Consortium’s member municipalities include:

- The Lake County Municipal League
- The Metro West Council of Government;
- The McHenry County Council of Governments;
- The Northwest Municipal Conference;
- The South Suburban Mayors and Managers Conference;
- The Southwest Conference of Mayors;
- The West Central Municipal Conference; and
- The Will County Governmental League

(*See Consortium Ex. 1.0 at 4:68-5:77.*)

B. The Consortium's Efforts Regarding A Model Franchise Agreement

The Consortium seeks to establish a Model Franchise Agreement for use in the Nicor service territory to implement energy efficiency measures and other items that are of interest and concern to the Consortium, as well as to the General Assembly and the Commission. (*See id.* at 5:79-81.)

A franchise agreement defines in part the relationship between a municipality and a public utility operating in that municipality. (*See id.* at 5:84-86.) Franchise agreements exist because public utilities such as Nicor have pipes and other facilities used to provide natural gas service that are located on or under property that is owned by the municipality, and the franchise agreement should explain the terms and conditions under which the gas public utility can use that public property. (*See id.* at 5:86-89.)

The Consortium seeks a new Model Franchise Agreement because Nicor presently has a standard form franchise agreement that is woefully outdated, that fails to take into account many of the developments that have occurred in the energy industry over the past several decades,

much less the past several years. (*See id.* at 5:91-94.) In many instances, municipalities entered into these agreements with Nicor over fifty years ago. (*See id.* at 5:94-95.)

As Mr. Bourke explained, many of the Consortium's member municipalities in the Nicor service territory, as well as other municipalities in the Nicor service territory, have had a very frustrating experience dealing with Nicor on both performance and franchise agreement issues. (*See id.* at 5:97-6:99.) Many of the Consortium's member municipalities have been aggravated by Nicor's unsatisfactory performance in dealing with municipalities. (*See id.* at 6:100-01.) The performance problems cover a range of areas, including, without limitation, failure to abide by local rules and regulations regarding field work, repairs, and restoration, and failure to respond to municipal requests in a timely manner. (*See id.* at 6:101-04.) Overall, there is a general sense among the Consortium's members that Nicor is neither respectful of the municipalities' rights as owners of the rights-of-way nor responsive to the municipalities' needs. (*See id.* at 6:104-06.) In addition, the Consortium believes that under the current Nicor form franchise agreement, Nicor does not compensate municipalities fairly for Nicor's use of the municipalities' rights-of-way and does not incentivize energy efficiency measures, much less work with the municipalities to implement community-wide energy efficiency programs. (*See id.* at 6:106-10.)

Mr. Bourke explained that individual municipalities have attempted to address these problems by approaching Nicor to negotiate an updated, modern franchise agreement, but those efforts have been thwarted by Nicor. (*See id.* at 6:112-13.) Indeed, Mr. Bourke testified that to his knowledge, Nicor has refused to negotiate a new, updated franchise agreement with any individual municipality that is in the Consortium -- or with any other municipality in its service area. (*See id.* at 6:114-16.) Instead of negotiating an updated agreement, Nicor continues to offer only its decades-old form franchise agreement, and as a result, several Consortium member

municipalities' franchise agreements with Nicor have lapsed, and for other municipalities the term date is nearing without any prospect that Nicor will agree to anything but its antiquated form franchise agreement. (*See id.* at 6:116-20.) In its rebuttal testimony, Nicor did not take issue with Mr. Bourke's summary of the history or current status of Nicor's discussions with municipalities.

Mr. Bourke explained that it is in this context that the Consortium was formed, with the goal of creating an updated Model Franchise Agreement. (*See id.* at 7:122-23.) The draft Model Franchise Agreement that the Consortium has crafted addresses a range of items that are important to the Consortium, including energy efficiency issues. The updated document is intended to be a modern, fair approach that defines the rights and responsibilities of both Nicor and the individual municipalities, providing a framework for appropriate compensation and jointly advancing energy efficiency. (*See id.* at 7:122-29.)

C. The Consortium's Perspective Rebutts Nicor's Attempt To Tout Its "Collaboration" And "Engagement"

When it initiated this proceeding on September 29, 2010, Nicor filed written testimony of three (3) witnesses. The testimony of Nicor's lead witness, Mr. Jerozal, enthusiastically touted the purported "collaboration" and "engagement" in which Nicor allegedly engaged prior to filing its EEP and the way in which Nicor intends to "collaborate" and "engage" going forward. (*See, e.g.,* Nicor Gas Ex. 1.0 at 10-12.)

Mr. Jerozal's direct testimony highlighted the "principles" that allegedly guided the development of Nicor's EEP and Nicor's "energy efficiency strategy." (*See id.* at 10:206-11:240.) In particular, Mr. Jerozal identified "collaboration" as one of the four guiding principles in the development of Nicor's EEP and "collaboration" as one of the five "components of the Nicor Gas energy efficiency strategy." (*Id.* at 10:210-11:218, 11:223-27.) Mr. Jerozal

further stated that “collaboration [] will be a hallmark of the Nicor Gas EEP.” (*Id.* at 11:236-37.) In addition, Mr. Jerozal described Nicor’s strategy of “engagement with existing regional and national groups.” (*Id.* at 11:225-27; 12:248-53.) Mr. Jerozal described the strategy as one “to learn from the experience of other entities involved in energy efficiency efforts, as well as obtain information about new ideas and strategies.” (*Id.* at 12:250-51.)

Similarly, Mr. Jerozal described particular stakeholders with which Nicor collaborated as well as some of the reasons for doing so, claiming that the collaboration helped Nicor “develop a robust plan.” (*See id.* at 10:217.) Nicor was statutorily obligated to collaborate with some stakeholders – such as DCEO – and was under no statutory obligation to collaborate with other stakeholders with which it collaborated. Mr. Jerozal admitted repeatedly on cross-examination on December 14, 2010 that Nicor was not under any statutory obligation to collaborate with certain stakeholders with whom it did collaborate on the EEP in the past and with whom it would collaborate on the EEP in the future. (*See, e.g.*, Transcript at 76:4-9; 76:19-77:4; 79:21-80:2; 81:16-82:6; 83:11-84:7.)

The testimony of Mr. Jerozal that Nicor submitted obviously tried to highlight Nicor’s statutorily required and voluntary “collaboration” and “engagement” as a way to impress upon the Commission that Nicor has done a good job reaching out to stakeholders, and to imply that it intends to collaborate voluntarily with a broad base of stakeholders going forward.

The Consortium responded to Nicor’s attempt to tout its “collaboration” and “engagement” because the Consortium disagrees that Nicor has done a good job of collaboration and engagement with stakeholders. The Consortium certainly disagrees that Nicor should be given “credit” for having undertaken purported collaboration and engagement with stakeholders prior to filing its EEP. On the contrary, the Consortium believes that Nicor has done a poor job

of collaborating and engaging with stakeholders, and that Nicor has given the Commission an incomplete and misleading picture of its efforts to date. Mr. Bourke addressed the issue of collaboration, and specifically responded to Nicor witness Mr. Jerozal's testimony about collaboration. (*See* Consortium Ex. 1.0 at 10:203-216.) That discussion addresses collaborative efforts both by Nicor and by DCEO and provides the Consortium's perspective on those efforts. (*See id.* at 10:203-11:228.) Mr. Bourke pointed out that:

Nicor made no effort to consult with the Consortium regarding Nicor's energy efficiency program, even though energy efficiency is a key part of the draft Model Franchise Agreement that the Consortium has been working on (as discussed above) and energy efficiency measures aimed at "local government [and] municipal corporations" are specifically required by the section of Act mandating the Nicor energy efficiency program.

(*See id.* at 10:205-10.)

Mr. Bourke then provided a recommendation for Commission action. He testified that given Nicor's poor record of collaboration, the clear statutory requirement to include municipalities in the EEP, and the fact that the Consortium is working on energy efficiency issues that have a clear potential overlap with the goals of the statute and Nicor's EEP, that it would be constructive for the Commission to direct Nicor to consult with the Consortium in the future in a meaningful, substantive manner on energy efficiency and related matters. (*See id.* at 11:232-248.)

Rather than engage substantively with the Consortium, Nicor has sought to exclude all of the Consortium's testimony and has sought to prevent the Consortium even from cross-examining Nicor's witnesses. This hardly exemplifies a spirit of "collaboration" or "engagement" – rather, it signals a plain unwillingness to engage in the type of collaborative thinking that should be used to achieve advances in energy efficiency. The Consortium respectfully requests that the Commission enter an Order directing Nicor to engage in

constructive, good faith dialogue with the Consortium to address energy efficiency and related issues.

IV.

PROGRAM ISSUES

A. Nicor Has Overall Responsibility For Design And Implementation Of The Entire EEP

The Act declares that:

It is the policy of the State that natural gas utilities and the Department of Commerce and Economic Opportunity are required to use cost-effective energy efficiency to reduce direct and indirect costs to consumers.

(220 ILCS 5/8-104(a).) The Act also provides that:

A minimum of 10% of the entire portfolio of cost effective energy efficiency measures **shall be procured from local government, municipal corporations, school districts, and community college districts.** Five percent of the entire portfolio of cost-effective energy efficiency measures may be granted to local government and municipal corporations for market transformation initiatives.

(220 ILCS 5/8-104(e)) (emphasis added.)

The Act indicates that there is supposed to be coordination between Nicor and the Illinois Department of Commerce and Economic Opportunity (“DCEO”) regarding development of Nicor’s EEP, including the provisions relating to municipalities, but that Nicor is “responsible for overseeing the design, development, and filing of” the energy efficiency plan. (*Id.*)

In seeking to exclude the Consortium from participation in the instant proceeding, Nicor has tried to shift its overall responsibility for development and implementation of its EEP to the DCEO on certain items. It is clear, however, that the Act imposes upon Nicor, and not DCEO, the overall responsibility for the EEP. Nicor witness Mr. Jerozal admitted that Nicor is responsible for implementing the entirety of the EEP – even the portion involving DCEO. (*See* Transcript 87:6-11.)

B. Despite Its Responsibility For The EEP, Nicor Has Made No Effort To Consult Or Coordinate With The Consortium On Energy Efficiency Issues

Nicor made no effort to consult with the Consortium regarding Nicor's EEP, even though energy efficiency is a key part of the draft Model Franchise Agreement that the Consortium has been working on (as discussed above) and energy efficiency measures aimed at "local government [and] municipal corporations" are specifically required by the section of Act mandating the Nicor energy efficiency program. (*See* Consortium Ex. 1.0 at 10:203-210.)

Nicor witness Mr. Jerozal confirmed on cross-examination that Nicor made no effort to consult with the Consortium regarding its EEP. Mr. Jerozal admitted that although Nicor consulted with a few stakeholders as it developed its EEP (including entities that it had no statutory obligation to consult), it did not consult with the Consortium. (*See, e.g.*, Transcript at 76:4-9; 76:19-77:4; 79:21-80:2; 81:16-82:6; 83:11-84:7.) Mr. Jerozal also admitted on cross-examination that even though the Act requires Nicor to consult with DCEO, Nicor never even suggested to DECO that it should consult with the Consortium. (*See id.* at 87:6-88:9.) Mr. Jerozal confirmed that Nicor never consulted with the Consortium, and Nicor has not proposed to consult with the Consortium, even though Mr. Jerozal repeatedly stated that broad-based collaboration would allow Nicor to improve its EEP, now and in the future. (*See id.* at 77:5-12; 78:20-79:5.) Of course, Nicor has known of the Consortium's existence for months. (*See* Consortium Ex. 1.0 at 10:214-15.)

Nicor's failure to consult with the Consortium is surprising and disappointing for at least two reasons. First, the Consortium's perspective is undoubtedly relevant and information concerning energy efficiency issues. Second, Nicor itself has touted its "collaboration" and

“engagement” with stakeholders, yet Nicor now admits that it has failed to collaborate or engage with the Consortium on these issues.

C. The Model Franchise Agreement Is An Efficient Mechanism To Implement Energy Efficiency

The Consortium’s testimony does not delve into all the aspects of the Consortium’s draft Model Franchise Agreement. Instead, it describes the aspects of the draft Model Franchise Agreement are directly related to energy efficiency issues. For example, the draft Model Franchise Agreement includes:

- Flexible alternative provisions regarding compensation to the municipality for Nicor’s use of the municipal right-of-way, including provisions to incentivize energy efficiency improvements and energy saving conduct by the municipality;
- Energy efficiency audit and training provisions;
- An effective most-favored-nations clause to ensure that all municipalities get the benefit of modern agreement provisions, including modern energy efficiency and savings provisions;
- Fair provisions regarding service compliance standards and the provision of information to municipalities;
- Modern requirements on use of the rights-of-way, restoration, abandonment of facilities, and public safety; and
- Provisions for real remedies for non-compliance.

(*See id.* at 7:138-8:152.)

Mr. Bourke explained that energy efficiency items are not currently covered in Nicor’s form franchise agreement, but that they should be addressed in a Model Franchise Agreement. (*See id.* at 8:156-57.) Mr. Bourke pointed out that this is not just his opinion, or the opinion of the Consortium. (*See id.* at 8:157-58.) He summarized a recent project undertaken by Region 5 of the U.S. Environmental Protection Agency (“USEPA”) (which covers Illinois and several other Midwestern states), to evaluate “opportunities to improve the way that municipal gas and

electric utility franchise agreements are structured so that they are more conducive to energy efficiency investments.” ((*See id.* at 8:158-63, citing EPA Region 5 Municipal Utility Franchise Agreement Project – Discussion Guide, at 1.) During the course of the USEPA project, USEPA interviewed representatives of the Consortium regarding energy efficiency issues, and during those conversations, USEPA recognized the value not only of the Consortium’s attempt to build energy efficiency provisions into a Model Franchise Agreement, but also the value of negotiating collectively rather than individually with Nicor. (*See id.* at 8:163-67.) For example, the draft report issued by USEPA makes the following statement under “Recommendations for Municipalities”:

Consider negotiating with the utility providers for a cash compensation option that both promotes energy efficiency and meets the municipality’s financial needs, including the need for protection against energy price increases, or consider negotiating collectively with other municipalities.

(*See id.* at 8:167-9:177, citing USEPA Sept. 8, 2010 Draft Final Utility Franchise Agreements Summary Report – Research on Implementing Energy Efficiency Investment within Illinois Municipalities that Receive Unbilled Energy, at 23.) Mr. Bourke explained that this is precisely the approach that the Consortium has taken. (*See id.* at 9:177-78.)

Mr. Bourke further explained that the Consortium has met with Nicor, however Nicor has been hesitant to discuss franchise agreement issues in substantive detail and has not yet fully engaged in a productive negotiation with the Consortium. (*See id.* at 9:181-83.)

Instead of embracing the Consortium’s proposal for cooperation, Nicor sought to have Mr. Bourke’s testimony stricken from the record of this proceeding on the basis that Section 8-104 does not refer to franchise agreements. (*See Nicor Motion to Strike at ¶ 5; Nicor Reply in Support of Motion to Strike at 2.*) That argument should be rejected out of hand. The fact that the statutory section does not refer to franchise agreements does not in any way mean that the

consideration of energy efficiency items addressed in a franchise agreement are somehow categorically excluded from the Commission's consideration in this proceeding. On the contrary, because franchise agreements provide an avenue to achieve or surpass the statutory energy efficiency requirements under Section 8-104, it is entirely appropriate that they be considered by the Commission as one of the many avenues that should be used to improve energy efficiency in Illinois as required by statute.

Whether there is a specific reference to franchise agreements in Section 8-104 is not the standard for deciding whether franchise agreements provide a viable avenue to implement energy efficiency improvements. Mr. Bourke's testimony explains clearly that there are components of the Consortium's Model Franchise Agreement setting forth energy efficiency measures that could be implemented. (*See* Consortium Ex. 1.0 at 7:138-152.) The fact that those measures could be implemented through a Model Franchise Agreement does not *disqualify* them from this proceeding. As Mr. Bourke explained, the United States Environmental Protection Agency specifically found that substantive energy efficiency improvement can and should be implemented through franchise agreements. (*See id.* at 8:154-9:178.)

Likewise, the Attorney General's Office explained that, given the difficulties that DCEO has encountered in trying to implement energy efficiency programs with public entities such as municipalities, the Consortium's approach provides an opportunity to advance discussions with Nicor and DCEO in a way that will improve the likelihood of achieving the savings goals outlined in the Act. (*See* Response of the People of the State of Illinois to the Motion to Strike of Nicor Gas Company at 5.)

The fact that Nicor is apparently refusing to consider the Consortium's energy efficiency proposals just because they are in a Model Franchise Agreement is odd, at best. The

Commission should consider the use of municipal franchise agreements as an avenue to implement energy efficiency. Given Nicor's intransigence, the Commission should take steps to direct Nicor to consult with the Consortium.

VI.

DCEO PLAN

As noted above, although Nicor has ultimate responsibility for the EEP plan under the terms of Section 8-104 of the Act, the DCEO, "working in conjunction with the utility," also has some involvement in the design and implementation of parts of the EEP relating to municipalities. (220 ILCS 5/8-104(e).)

Although DCEO consulted other stakeholders, DCEO did not consult with the Consortium regarding Nicor's energy efficiency program. (*See* Consortium Ex. 1.0 at 10:218-21.) It appears that DCEO was not previously aware of the Consortium's efforts to advance energy efficiency measures. Although Nicor certainly was aware of the Consortium's efforts to advance energy efficiency, Nicor witness Mr. Jerozal confirmed that Nicor never advised DCEO about the Consortium. (*See* Transcript at 88:5-7; 92:6-9.) Nicor's failure to even notify DCEO of the Consortium's existence is particularly startling given that Nicor witness Mr. Jerozal admits that nothing prevented Nicor from advising DCEO about the Consortium and admits that Nicor has ultimate responsibility for the EEP, including the aspects of the EEP relating to energy efficiency for municipalities. (*See* Transcript at 92:6-18; 87:6-22.)

Since becoming aware of the Consortium as a result of the Consortium's intervention in the instant proceeding and in ICC Docket No. 10-0564, DCEO has made initial efforts to reach out to and work cooperatively with the Consortium to explore areas of mutual interest on design and implementation of energy efficiency issues. This interaction creates the prospect for

exploring expansion of energy efficiency implementation with public entities such as municipalities, which have, until now, not been fully successful. (*See* Response of the People of the State of Illinois to the Motion to Strike of Nicor Gas Company at 5; *see also* DCEO Energy Efficiency/Demand Response Plan Year 1 (6/1/2008-5/31/2009) Evaluation Report: Public Sector Electric Efficiency Standard Incentives Program ComEd Service Territory, Jan. 20, 2010, at 5 (noting that the DCEO program on the electric side did not meet its savings goals), available at http://ilsag.org/evaluation_documents.) This interaction with DCEO is welcome and stands in stark contrast to Nicor's continued non-engagement with the Consortium.

The Consortium looks forward to having the opportunity to work cooperatively with DCEO to advance energy efficiency issues. The proactive approach that DCEO is exhibiting in working with the Consortium is the model that the Commission should expect and require, particularly on the part of regulated utilities such as Nicor.

IX.

CONCLUSION

The Act makes it clear that municipalities are supposed to be included in the energy efficiency plan submitted by Nicor. Indeed, not less than 10% of the energy efficiency portfolio is supposed to be procured from municipalities and similar local public entities. (*See* 220 ILCS 5/8-104(e).) There is a clear potential overlap between energy efficiency issues that are statutorily required under the Nicor energy efficiency plan and the energy efficiency issues that the Consortium is seeking to advance through the Model Franchise Agreement. (*See* Consortium Ex. 1.0 at 7:138-8:152.) Accordingly, as Consortium witness Mr. Bourke recommended, it would be constructive for the Commission to direct Nicor to consult with the Consortium in a meaningful, substantive manner on energy efficiency and related matters. (*See id.* at 11:239-41.)

The Commission possesses comprehensive supervisory authority over the operations of Illinois public utilities such as Nicor, including franchise agreements, and that the Commission possesses broad discretion to determine what the public interest requires and what measures are necessary for the protection of the public interest. (*See* Consortium Ex. 1.0 at 11:241-45; *see also, e.g., Abbott Labs, Inc. v. Ill. Commerce Comm'n*, 289 Ill. App. 3d 705, 711, 682 N.E.2d 340, 347 (1st Dist. 1997; *Peoples Gas Light and Coke Co. v. Ill. Commerce Comm'n*, 165 Ill. App. 3d 325, 246, 520 N.E.2d 46 (1st Dist. 1987).) Given the Commission's authority, and the clear interplay between energy efficiency-related items and the Consortium's efforts to establish a Model Franchise Agreement, the Commission would be acting appropriately and in the public interest in taking steps to direct Nicor to consult with the Consortium.

Dated: December 21, 2010.

Respectfully submitted,

The Northern Illinois Municipal Natural Gas Consortium

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STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

VERIFICATION

Christopher J. Townsend, being first duly sworn, on oath deposes and says that he is one of the attorneys for The Northern Illinois Municipal Natural Gas Consortium, that he has read the foregoing document, that he knows of the contents thereof, and that the same is true to the best of his knowledge, information, and belief.

Christopher J. Townsend

Subscribed and sworn to me
this ____ day of December 2010.
